1953

Title 59 Chapter 16-19: Use Tax to State Tax System - 1953

Utah Code Annotated

CHAPTER 16

USE TAX

59-16-1. Short title.—This act is known and may be cited as the "Use Tax Act of 1937."

History: L. 1937, ch. 114, § 1; R. S. 1933 & C. 1943, 80-16-1.

Title of Act.

An act imposing an excise tax on the storage, use, or other consumption in this state of tangible personal property, providing for the registration of retailers, providing for the ascertaining, levying, assessing, collecting, paying and disposing of such tax, and prescribing penalties for violations of the provisions hereof.

Comparable Provisions.

Deering's Cal. Rev. and Tax Code, § 6001 (citing this part of the Code as "Sales and Use Tax Law"); § 6009 (defines term "use"; subsequent sections define other terms pertinent to the use tax provisions).

Iowa Code 1950, § 423.1 (defining terms pertinent to Use Tax Law).

1. Nature of tax.

The Use Tax Act of 1937 is an excise tax imposed upon the privilege of storing or using property within this state, and liability for the tax is imposed upon the person so storing or using the property. Such person is the one ultimately responsible for the tax. He may discharge this liability though by payment of the tax to the retailer from whom he purchases the goods. Ford J. Twaits Co. v. Utah State Tax Comm., 106 U. 343, 148 P. 2d 343, cited with approval in Whitehill Sand & Gravel Co. v. State Tax Comm., 106 U. 469, 150 P. 2d 370, involving retail sales tax.

2. Purpose of act.

The obvious purpose of the Use Tax Act was to impose a tax on the use in this state of property the sale of which, because that sale took place outside the state, was beyond the reach of the Utah Sales Tax Act. Union Portland Cement Co. v. State Tax Comm., 110 U. 152, 176 P. 2d 879, modifying on rehearing 110 U. 135, 170 P. 2d 164.

3. Relation to Sales Tax Act.

From the legislative history of the Sales and Use Tax Acts, and from the administrative interpretations thereof, made with the knowledge and implied approval of the legislature, it follows rather conclusively that the Sales and Use Tax Acts are to be considered as correlative and complementary, and that, as far as exemptions are concerned, legislative created specific exemption from the sales tax are also to be treated as exemptions from the

use tax. Union Portland Cement Co. v. State Tax Comm., 110 U. 152, 176 P. 2d 879, 881, modifying on rehearing 110 U. 135, 170 P. 2d 164. Holding in Union Portland Cement case was reaffirmed in Geneva Steel Co. v. State Tax Comm., — U. —, 209 P. 2d 208.

4. Interstate commerce.

Of course, this Tax Act confers no right upon the state to tax interstate transportation of goods or to tax materials consumed in interstate transportation of goods or passengers. The right to tax exists only after the interstate shipment has terminated or prior to any subsequent use in interstate commerce. Southern Pac. Co. v. Utah State Tax Comm., 106 U. 451, 150 P. 2d 110, 113, reviewing cases at length.

Union Pac. R. Co. v. Utah State Tax Comm., 110 U. 99, 169 P. 2d 804, following Southern Pac. Co. v. Utah State Tax Commission, ante, and holding that the movements of Diesel engines used in switching operations, either within the terminal or from terminal to terminal, were in furtherance of interstate commerce, and, therefore, not subject to the use tax. There engines were instrumentalities in interstate commerce in Nebraska, and the transfer of them to Utah to engage in similar operations did not withdraw them from interstate commerce.

Decisions from other Jurisdictions—California.

When the use tax is considered in connection with the sales tax and the motor vehicle license tax, it becomes apparent that the legislature has provided a comprehensive taxing system applicable to the sale, use, storage or consumption of personal property; the three taxes are mutually exclusive, each taxing privilege not taxed by the other two; the use tax is imposed on certain of the privileges of ownership, but not on all of them; use taxes, including taxes imposed on the privilege of use, or storage, or withdrawal from storage, are excise taxes, and not property taxes; the tax is not upon ownership as such, but upon the privilege of use, storage or consumption. Douglas Aircraft Co., Inc. v. Johnson, 13 Cal. 2d 545, 90 P. 2d 572.

One of the purposes of the use tax statute is to make the coverage of the tax complete, to the end that the retail sales tax will not result in an unfair burden being placed upon the local retailer engaged solely in intrastate commerce as compared with the case where the property is purchased for use or storage in California and is used or stored in this state; the two taxes are complemental to each other, with the aim of placing the local retailers and their out-of-state competitors on an equal footing. Chicago Bridge & Iron Co. v. Johnson, 19 Cal. 2d 162, 119 P. 2d 945.

The use tax is not a property tax, but an excise tax, as it purports to be, and is valid. Brandtjen & Kluge, Inc. v. Fincher, 44 Cal. App. 2d (Supp.) 939, 111 P. 2d 979.

Collateral References.

Licenses⇨8(1).

53 C.J.S. Licenses § 2.

Use taxes, 47 Am. Jur. 249, Sales and Use Taxes § 42 et seq.

Constitutionality, construction, and application of general use tax or other compensating tax designed to complement state sales tax, 129 A. L. R. 222.

What is a property tax as distinguished from excise, license and other taxes, 103 A. L. R. 18.

59-16-2. Definitions.—The following words, terms and phrases when used in this act have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

(a) "Storage" means and includes any keeping or retention in this state for any purpose except sale in the regular course of business of tangible personal property purchased from a retailer.

(b) "Use" means and includes the exercise of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include the sale of that property in the regular course of business.

(c) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. A transaction whereby the pos-

session of property is transferred but the seller retains the title as security for the payment of the price shall be deemed a purchase.

(d) "Sales price" means the total amount for which tangible personal property is sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses or any other expenses whatsoever; provided, cash discounts allowed and taken on sales shall not be included, or shall the sales price include the amount charged for labor or services rendered in installing, applying, remodeling or repairing property sold.

(e) "Person" means and includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other political subdivision thereof, or any other group or combination acting as a unit, and the plural as well as the singular number.

(f) "Retailer" means and includes every person engaged in the business of making sales of tangible personal property for storage, use or other consumption; provided, when in the opinion of the commission it is necessary for the efficient administration of this act to regard any salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the commission may so regard them and may regard the dealers, distributors, supervisors or employers, as retailers for purposes of this act.

(g) "Commission" means the state tax commission of Utah.

(h) "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

(i) "Tax" means the tax payable by the person storing, using or consuming tangible personal property, the storage, use or consumption of which is subject to tax or the aggregate amount of taxes due from every retailer making sales of tangible personal property for storage, use or other consumption in this state during the period for which he is required to report his collections, as the context may require.

(j) "Taxpayer" shall include every retailer, as herein defined, and every person storing, using or consuming tangible personal property, the storage, use or consumption of which is subject to the tax imposed by this act when such tax was not paid to a retailer.

History: L. 1937, ch. 114, § 2; R. S. 1933 & C. 1943, 80-16-2.

1. Definitions.

"Transfer" is defined in Webster's New International Dictionary, 2nd Edition, as: "1. Act of transferring or state of being transferred; the removal or conveyance from one place, person, or thing, to another; transference, transmission. 7. Law. The conveyance of right, title, or property, either real or personal, from one person to another whether by sale, by gift, or otherwise; any act by which the property of one person is vested in another." Utah Concrete Products Corp.

v. State Tax Comm., 101 U. 513, 125 P. 2d 408.

The definition of "purchase" thus includes a "transfer, exchange or barter" for a consideration. "The mere bookkeeping and physical transfer of the use of one's own products not only does not come within the clear meaning contemplated by the legislature of 'transfer, exchange or barter,' but is also lacking in consideration. The mere charge on the books of the plaintiff for the materials they used for themselves is for purposes of keeping inventories correct and cannot be termed a 'transfer' in the sense as used by the Legislature, nor can the fact that the materials were 'transferred' from Provo, Utah, where they were made, to Salt Lake City, Utah, where they were used, be so designated. The Legislature contemplated transfer of right, title, or property from one person to another, and not simple bookkeeping entries or physical transfer from one place to another." Utah Concrete Products Corp. v. State Tax Comm., 101 U. 513, 125 P. 2d 408.

Under definition of word "purchase" in this section, building materials used by manufacturer for its own use are not subject to use tax. Utah Concrete Products Corp. v. State Tax Comm., 101 U. 513, 125 P. 2d 408.

Under subdivision (d), where contractor on a government project purchased the needed materials at a price fixed at seller's place of business, took possession thereof and shipped goods on its own account, and at its own risk, paying freight charges by its own check, such freight charges are not part of "sales price." Ford J. Twaits Co. v. Utah State Tax Comm., 106 U. 343, 148 P. 2d 343, 345, cited with approval in Whitehill Sand & Gravel Co. v. State Tax Comm., 106 U. 469, 150 P. 2d 370, involving retail sales tax.

The word "retailer" should be construed, wherever it is found in the act, to mean and include only such retailers as are subject to registration or only such as have a place of business or agents within the state. Contractors have been held to be included within the term "taxpayer." Ford J. Twaits Co. v. Utah State Tax Comm., 106 U. 343, 148 P. 2d 343.

Retailer as defined by this act is any person making sales of tangible personal property for storage or use within this state. Ford J. Twaits Co. v. Utah State Tax Comm., 106 U. 343, 148 P. 2d 343, cited with approval in Whitehill Sand & Gravel Co. v. State Tax Comm., 106 U. 469, 150 P. 2d 370, involving retail sales tax.

The retailer required to register by this section is the one engaged in business within this state, having agents or places of business within the state upon which to report. This same interpretation should be put upon retailer as used in this section, where it is provided that the retailer is responsible for the collection of the tax. Ford J. Twaits Co. v. Utah State Tax Comm., 106 U. 343, 148 P. 2d 343.

Furnishing meals to the crew of a dining car moving in interstate commerce is a "use" within meaning of this section. Southern Pac. Co. v. Utah State Tax Comm., 106 U. 451, 150 P. 2d 110, followed in Union Pac. R. Co. v. Utah State Tax Comm., 110 U. 99, 169 P. 2d 804, which held that the movements of Diesel engines used in switching operations, either within the terminal or from terminal to terminal, were in furtherance of interstate commerce, and, therefore, not subject to the use tax. These engines were instrumentalities in interstate commerce in Nebraska, and the transfer of them to Utah to engage in similar operations did not withdraw them from interstate commerce.

2. **Payment of tax.**

Tax may be discharged by payment to retailer from whom goods are purchased. Ford J. Twaits Co. v. Utah State Tax Comm., 106 U. 343, 148 P. 2d 343.

3. **Liability for tax.**

Illinois retail mail order house doing business by mail in Utah was subject to payment of use tax. Montgomery Ward & Co. v. State Tax Comm., 100 U. 222, 112 P. 2d 152.

Collateral References.

Licenses⇐15.1(2).
53 C.J.S. Licenses § 30.

Constitutionality, construction, and application of general use tax or other compensating tax designed to complement state sales tax, 153 A. L. R. 609.

59-16-3. Use tax.—There is levied and imposed an excise tax on the storage, use or other consumption in this state of tangible personal property purchased on or after July 1, 1937, for storage, use or other consumption in this state at the rate of two per cent of the sales price of such property.

Every person storing, using or otherwise consuming in this state tangible personal property purchased shall be liable for the tax imposed

by this act, and the liability shall not be extinguished until the tax has been paid to this state.

History: L. 1937, ch. 114, § 3; R. S. 1933 & C. 1943, 80-16-3.

Comparable Provisions.

Deering's Cal. Rev. and Tax. Code, § 6201 (imposing excise tax on storage, use, or other consumption in the state of tangible personal property purchased from retailer on or after July 1, 1935, for storage, use, or other consumption in the state at rate of three per cent of sales price of the property).

Iowa Code 1950, § 423.2 (imposing excise tax on use in Iowa of tangible personal property purchased for use in Iowa, at rate of two per cent of purchase price; the tax is imposed on every person using such property within Iowa until such tax has been paid directly to county treasurer, to a retailer, or to the state tax commission).

1. Definitions.

"The expression 'purchased for storage, use or consumption in this state' evidently was used to make the levy mesh with the provision which exempted property stored in this state but purchased for resale or use in another state. The section clearly means purchased for storage, use or other consumption and stored, used or otherwise consumed in this state except as in section 59-16-4 provided. Thus the property here involved though purchased for use in interstate commerce, but used in Utah, though in interstate commerce, is taxable unless exempted or constitutionally prohibited." Southern Pac. Co. v. Utah State Tax Comm., 106 U. 451, 150 P. 2d 111, 112.

Furnishing meals to dining car crew of interstate railroad is a consumption or use in furtherance of interstate commerce. "Petitioner's dining service is as essential a part of its function as a carrier as is any other activity concerned with transporting passengers or freight." Southern Pac. Co. v. Utah State Tax Comm., 106 U. 451, 150 P. 2d 110, 112.

Union Pac. R. Co. v. Utah State Tax Comm., 110 U. 99, 169 P. 2d 804, following Southern Pac. Co. v. Utah State Tax Comm., ante, and holding that the movements of Diesel engines used in switching operations, either within the terminal or from terminal to terminal, were in furtherance of interstate commerce, and, therefore, not subject to the use tax. These engines were instrumentalities in interstate commerce in Nebraska, and the transfer of them to Utah to engage in similar operations did not withdraw them from interstate commerce.

2. Exemption from tax.

Building materials used by the manufacturer for its own use are not subject to tax under the Use Tax Act of 1937. Utah Concrete Products Corp. v. State Tax Comm., 101 U. 513, 125 P. 2d 408.

An independent contractor purchasing goods and material on his own account for work to be done on a government project, the purchases not being made as an agent of the government, is not exempt from the sales and use tax. In other words, an independent contractor is not exempt from said tax merely because he purchased materials for incorporation into a government project. If the government so intends, it is a simple matter to authorize the contractor to buy as the government's agent, and issue him a tax exemption certificate. Ford J. Twaits Co. v. Utah State Tax Comm., 106 U. 343, 148 P. 2d 343.

Isolated or occasional sales made in this state are not subject to the operation of the use tax. Geneva Steel Co. v. State Tax Comm., — U. —, 209 P. 2d 208.

The storage, use or other consumption of property, the sale of which is made in this state and which is not made amenable to sales tax, is likewise not subject to the use tax. Geneva Steel Co. v. State Tax Comm., — U. —, 209 P. 2d 208.

Sale of steel plant and inventories located in state and declared war surplus property, to steel company, by Reconstruction Finance Corporation acting by and through War Assets Administrator, was an isolated and occasional sale, exempt from use tax. Geneva Steel Co. v. State Tax Comm., — U. —, 209 P. 2d 208.

3. Sale in sister state.

Whether transaction was completed sale in sister state, so as to render Utah use tax (59-16-1 et seq.) rather than Utah sales tax (59-15-1 et seq.) applicable, depends upon law of that state, but, if that law is neither pleaded nor proved, it will be presumed that law of sister state is same as Utah law, and Supreme Court will view transaction under Utah statutes where law of sister state is not part of record. Whitmore Oxygen Co. v. Utah State Tax Comm., 114 U. 1, 196 P. 2d 976.

Under contract for sale of acetylene cylinders by company, whose plant was located in Indiana, to Utah company, f.o.b. factory, Speedway, Indiana, sale of cylinders was consummated in Indiana rather than in Utah, so that Utah use tax (59-16-1 et seq.) and not Utah sales tax (59-15-1 et seq.) was applicable,

even though contract provided that its validity, interpretation and performance should be governed by laws of Utah, and also contained provision rendering Utah company liable for any sales, use or other excise tax for which seller might be liable. Whitmore Oxygen Co. v. Utah State Tax Comm., 114 U. 1, 196 P. 2d 976.

Collateral References.

Licenses⇐15.1(2).
53 C.J.S. Licenses § 30.

59-16-4. Exemptions.—The storage, use or other consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this act:

(a) Property, the gross receipts from the sale of which are required to be included in the measure of the tax imposed by chapter 63, Laws of Utah, 1933, and any amendments made or which may be made thereto.

(b) Property, the storage, use or other consumption of which this state is prohibited from taxing under the Constitution or laws of the United States of America or of this state; property stored in the state of Utah for resale, consumption or use in some state other than the state of Utah.

(c) Property brought into this state by a nonresident for his or her own personal use or enjoyment while within the state.

(d) Property, the gross receipts from the sale, distribution or use of which are now subject to a sale or excise tax under the laws of this state or of some other state of the United States.

(e) Mineral bullion, mineral concentrates or mineral precipitates, when sold by the producer or refiner thereof for storage, use or other consumption in this state.

(f) Property stored, used or consumed by the United States government or the state of Utah, and their departments, institutions and political subdivisions.

(g) Property purchased for resale in this state, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of business, and for the purposes of this act, poultry, dairy and other livestock feed, and the components thereof and all seeds or seedlings, are deemed to become component parts of the eggs, milk, meat and other livestock products, plants and plant products, produced for resale; and each purchase of such feed or seed shall be exempt from taxation under this act.

(h) Property which enters into and becomes an ingredient or component part of the property which a person engaged in the business of manufacturing, compounding for sale, profit or use manufactures or compounds, or the container, label or the shipping case thereof.

History: L. 1937, ch. 114, § 4; R. S. 1933 & C. 1943, 80-16-4.

1. Constitutionality.

The fact that after the amendment of March 18, 1943, coal used industrially in Utah, regardless of where it was mined or where it was sold, was subject to the Utah State Use Tax Act, was not discriminatory against coal mined out of Utah and in favor of Utah coal. Accordingly, use tax statute is not contrary to commerce clause of the federal Constitution. Union Portland Cement Co. v. State Tax Comm., 110 U. 135, 170 P. 2d 164, 169, modified on rehearing 110 U. 152, 176 P. 2d 879, giving lengthy and complete history of both Sales and Use Tax Acts.

2. Meaning of word "consumption."

"Iron grinding balls," "firebrick" and "coal" consumed in the manufacture of cement are not exempt from sales tax.

"The statutes of this state do not exempt machinery used in manufacturing processes from the use or sales tax. The fact that a machine used in the manufacturing process is worn away in whole or part during the manufacturing process and the materials resulting incidentally enter into the products manufactured does not exempt the manufacturer from either the sales or use tax on the purchase or use of that machine." Union Portland Cement Co. v. State Tax Comm., 110 U. 135, 170 P. 2d 164, 172, modified on rehearing 110 U. 152, 176 P. 2d 879.

3. Interstate commerce.

This act and this section confer no right to tax interstate transactions. Accordingly, any attempt to tax consumption of food by employees, who receive the same without compensation in the performance of their duties in interstate commerce, would be unlawful under the commerce clause of the Constitution of the United States of America, the use tax specifically though needlessly, exempting such use or consumption from the use tax. Southern Pac. Co. v. Utah State Tax Comm., 106 U. 451, 150 P. 2d 110.

Union Pac. R. Co. v. Utah State Tax Comm., 110 U. 99, 169 P. 2d 804, following Southern Pac. Co. v. Utah State Tax Comm., ante, and holding that the movements of Diesel engines used in switching operations, either within the terminal or from terminal to terminal, were in furtherance of interstate commerce, and, therefore, not subject to the use tax. These engines were instrumentalities in interstate commerce in Nebraska, and the transfer of them to Utah to engage in similar operations did not withdraw them from interstate commerce.

4. Industrial coal.

Subsection (a) of this section was enacted to prevent the sales tax and the use tax from being chargeable on the same articles of personal property; that is, to prevent the use tax from being applied to the use, storage or consumption of specific articles of personal property, the gross receipts from the sale of which were subject to the sales tax. Since March 18, 1943, the gross receipts from the sales of industrial coal made in Utah have not been subject to the sales tax; therefore, the use, storage or other consumption of that industrial coal was not exempted by subsection (a) from the use tax. Union Portland Cement Co. v. State Tax Comm., 110 U. 135, 170 P. 2d 164, 168, modified on rehearing 110 U. 152, 176 P. 2d 879.

The amendment to the sales tax statute effective March 18, 1943, removed sales made in Utah of coal for industrial use from operation of the Sales Tax Act. Removal of the sales from the Sales Tax Act also removed the previously enjoyed exemptions from the use tax of the use in industry of Utah purchased coal because no longer were the "gross receipts from the sale" of such coal "required to be included in the measure of the [sales] tax" and no longer were the "gross receipts from the sale" subject to a "sale or excise tax under the laws of this state," and the use of said coal in industry in Utah is not exempted from the use tax by any of the other provisions of this section. The practical effect of the amendment was to make sales in Utah of coal for industrial use exempted from the sales tax, but the use of that coal in Utah subject to the use tax. Union Portland Cement Co. v. State Tax Comm., 110 U. 135, 170 P. 2d 164, 169, modified on rehearing 110 U. 152, 176 P. 2d 879.

The use of Utah sold industrial coal is not exempt under subsection (d), even though gross receipts from the sale, distribution or use of such coal are not shown to be subject to a sales or excise tax, other than the Utah use tax, of any state of the union. Union Portland Cement Co. v. State Tax Comm., 110 U. 135, 170 P. 2d 164, 169, modified on rehearing 110 U. 152, 176 P. 2d 879.

5. Purpose and effect of subsection (d).

Exemption from taxation provided by subsection (d) applies only where property is subject to sales or excise tax under laws of Utah or some other state. Whitmore Oxygen Co. v. Utah State Tax Comm., 114 U. 1, 196 P. 2d 976.

Use by buyer in Utah of cylinders procured under sale consummated in Indiana was not exempt from taxation under subsection (d) on ground that transaction was subject to taxation under general Sales Tax Act of Indiana, where United States Supreme Court had ruled that act unconstitutional as applied to gross receipts of corporation whose income is largely derived from sales to customers in other states, and hence sale in question could not be taxed under that act. Whitmore Oxygen Co. v. Utah State Tax Comm., 114 U. 1, 196 P. 2d 976, construing J. D. Adams Mfg. Co. v. Storen, 304 U. S. 307, 82 L. Ed. 1365, 58 S. Ct. 913, 117 A. L. R. 429.

The clear intent of the legislature in passing subsection (d) was to prevent duplication of taxes and discrimination against property which was already subject to a tax comparable to the use tax.

The subsection in effect says: If a sales or excise tax is charged by any state of the Union against the gross receipts from the sale, distribution or use of tangible personal property, the storage, use, or other consumption of that specific property in Utah is exempted from the Utah state use tax. The use in Utah of industrial coal sold in Utah is not exempted from the use tax by subsection (d) merely because the sales in Utah of industrial coal were subject to the Utah sales tax at the time the subsection became effective. Union Portland Cement Co. v. State Tax Comm., 110 U. 135, 170 P. 2d 164, 169, modified on rehearing 110 U. 152, 176 P. 2d 879.

6. Extent of exemptions.

Subsection (h) of this section exempts from the use tax property which enters into and becomes an ingredient or component part of the property manufactured, which is thus passed on to an ultimate user. It does not exempt property which is consumed by the manufacturer as last user. Union Portland Cement Co. v. State Tax Comm., 110 U. 135, 170 P. 2d 164, 171, applying above general rule to "iron grinding balls," "firebrick" and "coal" used in manufacturing cement, modified on rehearing 110 U. 152, 176 P. 2d 879.

Collateral References.

Licenses⊜19(3).
53 C.J.S. Licenses § 31.

59-16-5. Registration of retailers.—Every retailer selling tangible personal property for storage, use or other consumption in this state shall within thirty days after the effective date of this act register with the commission and give the name and address of all agents operating in this state, the location of any and all distribution or sales houses or offices or other places of business in this state and such other information as the commission may require.

History: L. 1937, ch. 114, § 5; R. S. 1933 & C. 1943, 80-16-5.

1. Manner of registering.

"Retailers are required by the act to register with the commission, giving the names of agents and places of business within this state." Ford J. Twaits Co. v. Utah State Tax Comm., 106 U. 343, 148 P. 2d 343.

Collateral References.

Licenses⊜15.1(2).
53 C.J.S. Licenses § 30.

59-16-6. Collection of tax.—Every retailer making sales of tangible personal property for storage, use or other consumption in this state, not exempted under the provisions of section 59-16-4 hereof, shall be responsible for the collection of the tax imposed by this act from the purchaser. The retailer may, if he sees fit, collect the tax from the purchaser, but in no case shall he collect as tax an amount (without regard to fractional parts of one cent) in excess of the tax computed at the rate prescribed by this act.

The tax herein required to be collected by the retailer shall constitute a debt owed by the retailer to this state.

History: L. 1937, ch. 114, § 6; R. S. 1933 & C. 1943, 80-16-6.

Compiler's Note.

The reference in this section to "section 59-16-4" appeared in Code 1943 as "section 4."

1. Who must collect tax.

The retailer, as that term is used in this act, is responsible for the collection of the tax, and when collected, it is a debt due from the retailer to the state. Ford J. Twaits Co. v. Utah State Tax Comm., 106 U. 343, 148 P. 2d 343.

Collateral References.

Licenses⊜32(2).
53 C.J.S. Licenses § 52.
Assessment, collection, and enforcement, 47 Am. Jur. 259, Sales and Use Taxes § 57.

59-16-7. Returns—Payments—Tokens—Exemption certificates.—The tax imposed by this act shall be due and payable to the commission bi-

monthly, on or before the fifteenth day of the month next succeeding each calendar bimonthly period, the first of such bimonthly periods being the period commencing with the first day of July, 1937. Every taxpayer shall, on or before the fifteenth day of the month next succeeding each calendar bimonthly period, said first bimonthly period ending on the thirty-first day of August, 1937, file with the commission a return for the preceding bimonthly period in such form and containing such information as may be prescribed by the commission. The return shall be accompanied by a remittance of the amount of tax herein required to be collected or paid by the taxpayer during the period covered by the return. The commission may extend the time for making returns and paying the taxes collected or due under such rules and regulations as it may prescribe, but no such extension shall be for more than ninety days.

If the accounting methods regularly employed by the taxpayer in the transaction of his business are such that reports of sales or purchases made during a calendar bimonthly period will impose unnecessary hardships, the commission may accept reports at such intervals as will in its opinion better suit the convenience of the taxpayer and will not jeopardize the collection of the tax.

For the purposes of more efficiently securing the payment, collection, and accounting for the taxes provided for under this act, the commission in its discretion, by proper rules and regulations, may provide for the issuance, affixing, and payment of revenue stamps or tokens. In such case, the provisions of the law relating to the use and misuse of cigarette stamps, in so far as the same may be applicable, are extended to and made a part of this act.

In case of a sale upon credit, a contract for sale wherein it is provided that the price shall be paid in installments and title does not pass until a future date, or a conditional sale, there shall be paid upon each payment upon the purchase price that portion of the total tax which the amount paid bears to the total purchase price. If any retailer, during any reporting period, collects as a tax an amount in excess of two per cent of his total taxable sales he shall remit to the commission the full amount of the tax herein imposed and also such excess; and if any retailer under the pretense or representation of collecting the tax imposed by this act shall collect during any reporting period an amount in excess of two per cent of his total taxable sales, the retention of such excess or any part thereof or the intentional failure to remit punctually to the commission the full amount required to be remitted by the provisions of this act, is declared to be unlawful and shall be punishable by a fine of not exceeding $1,000 or by imprisonment for not to exceed six months or by both such fine and imprisonment.

For the purpose of the proper administration of this act and to prevent evasion of the tax and the duty to collect the same herein imposed, it shall be presumed that tangible personal property sold by any person for delivery in this state is sold for storage, use or other consumption in this state unless the person selling such property shall have taken from the purchaser an exemption certificate signed by and bearing the name

and address of the purchaser to the effect that the property was exempted within the provisions of section 59-16-4 hereof. Such exemption certificates shall contain such information as may be prescribed by the commission.

History: L. 1937, ch. 114, § 7; R. S. 1933 & C. 1943, 80-16-7.

Compiler's Note.

The reference in this section to "section 59-16-4" appeared in Code 1943 as "section 4."

1. "Taxpayer" defined.

Contractor purchasing materials on its own account for work on government project is a "taxpayer" within meaning of this section requiring making of returns and payments by "every taxpayer." Ford J. Twaits Co. v. Utah State Tax Comm., 106 U. 343, 148 P. 2d 343, 345.

2. Returns.

To successfully contend that "return" within meaning of Use Tax Act has been filed, taxpayer must be able to show that it has filed return apprising tax commission that it claims no use tax is due or that stated amount is due. Whitmore Oxygen Co. v. Utah State Tax Comm., 114 U. 1, 196 P. 2d 976.

Fact that tax commission has made it possible to make return for both sales and use tax on same form, does not do away with necessity of furnishing information as to both taxes, and filing of return as to one does not constitute filing of return as to both. Whitmore Oxygen Co. v. Utah State Tax Comm., 114 U. 1, 196 P. 2d 976.

Should taxpayer mistakenly file sales tax return on given transaction instead of use tax return, such mistake is excusable and no further tax need be assessed, under regulation of tax commission rendering it unnecessary for taxpayer to determine which tax is technically applicable. Whitmore Oxygen Co. v. Utah State Tax Comm., 114 U. 1, 196 P. 2d 976.

Return on tax commission's form 71, whereon taxpayer makes entries only as to sales tax and signs printed certification at bottom of form, but does not place figures, words, or marks of any kind in space reserved for use tax entries, does not constitute "return" within meaning of Use Tax Act so as to start statute of limitations running against use tax. Whitmore Oxygen Co. v. Utah State Tax Comm., 114 U. 1, 196 P. 2d 976. (Pratt, J., dissenting.)

Collateral References.

Licenses⇨28.
53 C.J.S. Licenses § 46.

Deductibility of attorneys' fees or other expenses paid or incurred by taxpayer in preparing returns, contesting taxes, or attempting to obtain tax refunds, 122 A. L. R. 218.

59-16-8. Failure to pay tax—Penalty.—Any person failing to pay any tax to the state or any amount of tax herein required to be collected or paid to the state, except amounts determined to be due by the commission under the provisions of section 59-16-9 and 59-16-10 hereof, within the time required by this act, shall pay in addition to the tax or the amount of tax herein required to be collected or paid penalty and interest as provided in section 59-16-9 hereof.

History: L. 1937, ch. 114, § 8; R. S. 1933 & C. 1943, 80-16-8.

Compiler's Note.

The references in this section to "section 59-16-9 and 59-16-10" and "section 59-16-9" appeared in Code 1943 as "section 9 and 10" and "section 9" respectively.

Collateral References.

Licenses⇨32(1).
53 C.J.S. Licenses § 51.

59-16-9. Deficiencies—Penalty.—If the commission is not satisfied with the return and payment of the amount of tax herein required to be paid to the state by any person, it is authorized and empowered to examine the return and recompute and determine the amount required to be paid based upon the facts contained in the return or upon any information within its possession or that shall come into its possession. All amounts determined to be due under the provisions of this section shall bear interest at the rate of one-half of one per cent per month from the time the return was

due. If any part of the deficiency for which a determination of an additional amount due is made is due to negligence or intentional disregard of the act or authorized rules and regulations, but without intent to defraud, a penalty of ten per cent of such amount shall be added, plus interest at the rate of one per cent per month from the time the return was due. If any part of the deficiency for which a determination of an additional amount is made is due to fraud or an intent to evade the act or authorized rules and regulations, a penalty of one hundred per cent of such amount shall be added, plus interest at the rate of one per cent per month from the time the return was due. The commission shall give to the retailer or person storing, using or consuming tangible personal property written notice of its determination by mail postpaid and such deficiency, plus penalties and interest, shall be due and payable ten days after notice and demand.

History: L. 1937, ch. 114, § 9; R. S. 1933 & C. 1943, 80-16-9.

1. Assessment of penalty.

Under this section, the state tax commission is authorized to assess the penalty prescribed thereby. Ford J. Twaits Co. v. Utah State Tax Comm., 106 U. 343, 148 P. 2d 343, 346.

Collateral References.

Licenses⇐32(1).
53 C.J.S. Licenses § 51.

59-16-10. Failure to make returns—Estimates—Penalty.—If any person neglects or refuses to make a return required to be made by this act, the commission shall make an estimate for the period or periods in respect to which such person failed to make a return, based upon any information in its possession or that may come into its possession, of the amount of the total sales price of tangible personal property sold or purchased by such person, the storage, use or other consumption of which in this state is subject to the tax imposed by this act, and upon the basis of said estimate compute and determine the amount required to be paid to the state. Such return shall be prima facie correct for the purposes of this act and the amount of tax due thereon shall be subject to the penalties and interest as provided in section 59-16-9 hereof. Promptly thereafter the commission shall give to such person written notice by mail postpaid of such estimate, determination, and penalty.

History: L. 1937, ch. 114, § 10; R. S. 1933 & C. 1943, 80-16-10.

Compiler's Note.

The reference in this section to "section 59-16-9" appeared in Code 1943 as "section 9."

1. Assessment of penalty.

Under this section, the state tax commission is authorized to assess the penalty prescribed thereby. Ford J. Twaits Co. v. Utah State Tax Comm., 106 U. 343, 148 P. 2d 343, 346.

Collateral References.

Licenses⇐32(1).
53 C.J.S. Licenses § 51.

59-16-11. Petition for redetermination—Decisions, when final—Exclusive jurisdiction of Supreme Court.—Any person from whom an amount is determined to be due under the provisions of section 59-16-9 or 59-16-10 hereof may petition the commission in writing for a hearing or redetermination thereof within ten days after the notice is mailed to him, in which petition he shall set forth the reasons why such hearing should be granted.

If a petition for a hearing or redetermination is not filed within said ten day period, the amount determined to be due becomes final at the expiration thereof, and the person shall be deemed and treated as waiving and abandoning any rights to question said amount determined to be due. If a petition for a hearing or redetermination is filed within said ten day period, the commission shall notify the petitioner of the time and place fixed by it for such hearing or redetermination.

The order or decision of the commission upon a petition for a hearing or redetermination shall be in writing and a duly certified copy thereof mailed to the petitioner within five days. All such orders or decisions shall become final thirty days after notice thereof shall have been mailed the petitioner unless proceedings are taken within that time for review by the Supreme Court upon a writ of certiorari or review as herein provided, in which case it shall become final (1) when affirmed or modified by the judgment of the Supreme Court, (2) if the Supreme Court remands the case to the commission for rehearing when it is thereafter determined in accordance with the directions of the Supreme Court with respect to the initial proceeding. The procedure herein provided shall be deemed an exclusive procedure to review, reverse, or annul any such decision of the commission and no court of this state, except the Supreme Court, shall have jurisdiction to suspend or delay the operation or execution thereof.

History: L. 1937, ch. 114, § 11; R. S. 1933 & C. 1943, 80-16-11.

Compiler's Note.

The reference in this section to "section 59-16-9 or 59-16-10" appeared in Code 1943 as "section 9 or 10."

1. Order of tax commission.

Under this section the Supreme Court is authorized to affirm, modify or vacate an order of the state tax commission. Ford J. Twaits Co. v. Utah State Tax Comm., 106 U. 343, 148 P. 2d 343.

Collateral References.

Licenses⇨35.
53 C.J.S Licenses § 58.

59-16-12. Review by Supreme Court.—Within thirty days after notice of any decision of the commission, any party affected thereby may apply to the Supreme Court of this state for a writ of certiorari or review for the purpose of having the unlawfulness of such decision inquired into and determined. Such writ shall be made returnable not later than twenty days after the date of the issuance thereof and shall direct the commission to certify its record, which shall include all the proceedings and the evidence taken in the case, to the court. Upon the hearing no new or additional evidence may be introduced, but the same shall be heard on the record before the commission as certified to by it. The decision of the commission may be reviewed both upon the law and facts, and the provisions of the Code of Civil Procedure of this state relating to appeals so far as applicable and not in conflict with this act apply to the proceedings in the Supreme Court under the provisions of this section.

History: L. 1937, ch. 114, § 12; R. S. 1933 & C. 1943, 80-16-12.

Collateral References.

Licenses⇨35.
53 C.J.S. Licenses § 58.

59-16-13. Conditions precedent to review.—Before making application to the Supreme Court for a writ, the full amount of the taxes, interest

and other charges audited and stated in the determination or decision of the commission must be deposited with the commission and an undertaking filed with the commission in such amount and with such surety as the commission shall require to the effect that if such writ is dismissed or the decision of the commission affirmed, the applicant for the writ will pay all costs and charges which may accrue against him in said case, or, at the option of the applicant, such undertaking may be in a sum sufficient to cover the taxes, interest and other charges audited and stated in such decision, plus the costs and charges which may accrue against him in said case, in which event the applicant shall not be required to pay such taxes, interest and other charges as a condition precedent to his application for the writ.

History: L. 1937, ch. 114, § 13; R. S. 1933 & C. 1943, 80-16-13.

Collateral References.
Licenses⊂=35.
53 C.J.S. Licenses § 58.

59-16-14. Refunds.—If the commission determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the commission shall certify to the state auditor the amount collected in excess of what was legally due, from whom it was collected, or by whom paid to the commission, and, if approved by the state auditor, the same shall be credited on any amounts then due from such person to the state of Utah under this act or under any other taxing act, the administration of which is vested in the commission, and the balance shall be refunded to such person, or his successors, administrators, executors or assigns, but no such credit or refund shall be allowed after two years from the date of overpayment.

In the event any amount has been illegally determined to be due from any person the commission shall authorize the cancellation of the amounts upon its records.

History: L. 1937, ch. 114, § 14; R. S. 1933 & C. 1943, 80-16-14.

Collateral References.
Licenses⊂=34.
53 C.J.S. Licenses § 57.

59-16-15. Collection of tax by warrant.—In any case in which any amount required to be paid to the state, in accordance with the provisions of this act, is not paid when due and if the person liable for the payment of the amount has not regularly followed the procedure outlined in sections 59-16-11, 59-16-12 and 59-16-13, hereof, the commission may issue a warrant in duplicate, under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of a delinquent taxpayer found within his county for the payment of the amount due thereof, with the added penalties, interest and costs, and to return such warrant to the commission and pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty days from the date of the warrant. Immediately upon receipt of said warrant in duplicate, the sheriff shall file the duplicate with the clerk of the district court in his county, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent taxpayer mentioned in the warrant,

and in appropriate columns the amount of tax, penalties, interest and costs for which the warrant is issued and the date when such duplicate is filed, and thereupon the amount of such warrant so docketed shall have the force and effect of an execution against all personal property of the delinquent taxpayer, and shall also become a lien upon the real property of the delinquent taxpayer in the same manner and to the same extent as a judgment duly rendered by any district court and docketed in the office of the clerk thereof. The sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner as is prescribed by law in respect to execution issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

History: L. 1937, ch. 114, § 15; R. S. 1933 & C. 1943, 80-16-15.

Compiler's Note.

The reference in this section to "sections 59-16-11, 59-16-12 and 59-16-13," appeared in Code 1943 as "sections 11, 12, and 13."

Collateral References.

Licenses⇐32(2).
53 C.J.S. Licenses § 54.

59-16-16. Tax a lien.—The tax imposed by this act shall be a lien upon the property of any retailer liable for an amount of tax, herein required to be collected, who shall sell out his business or stock of goods or shall quit business, if such retailer shall fail to make a final return and payment within fifteen days after the date of selling or quitting business. His successor, successors or assigns, if any, shall be required to withhold sufficient of the purchase money to cover the amount of such taxes herein required to be collected and interest or penalties due and paid until such time as the former owner shall produce a receipt from the commission showing that they have been paid or a certificate stating that no amount is due. If the purchaser of a business or stock of goods shall fail to withhold sufficient purchase money as above provided, he shall be personally liable for the payment of the amount of taxes herein required to be collected or paid by the former owner, interest and penalties accrued and unpaid by the former owner, owners or assignors.

History: L. 1937, ch. 114, § 16; R. S. 1933 & C. 1943, 80-16-16.

Collateral References.

Licensing⇐31.
53 C.J.S. Licenses § 50.

59-16-17. Notice of delinquency.—In the event that any person is delinquent in the payment of the amount herein required to be paid by him, the commission may give notice of the amount of such delinquency by registered mail to all persons having in their possession, or under their control, any credits or other personal property belonging to such person, or owing any debts to such person at the time of the receipt by them of such notice and thereafter any person so notified shall neither transfer nor make any other disposition of such credits, other personal property, or debts until the commission shall have consented to a transfer or disposition, or until twenty days shall have elapsed from and after the receipt of such notice. All persons so notified must, within five days after receipt of such notice, advise the commission of any and all such credits, other

personal property, or debts in their possession, under their control, or owing by them, as the case may be.

History: L. 1937, ch. 114, § 17; R. S. 1933 & C. 1943, 80-16-17.

Collateral References.
Licenses⇐32(2).
53 C.J.S. Licenses § 53.

59-16-18. Delinquency, proceedings to collect.—At any time within four years after any person is delinquent in the payment of any amount herein required to be paid, the commission may proceed forthwith to collect such amount by appropriate judicial proceedings, which remedy shall be in addition to all other existing remedies.

History: L. 1937, ch. 114, § 18; R. S. 1933 & C. 1943, 80-16-18.

Collateral References.
Licenses⇐32(2).
53 C.J.S. Licenses § 53.

59-16-19. Remedies cumulative.—It is expressly provided that each remedy of the state shall be cumulative for the collection of an amount due it under this act, and that no action taken by the commission shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this act.

History: L. 1937, ch. 114, § 19; R. S. 1933 & C. 1943, 80-16-19.

Collateral References.
Licenses⇐32(2).
53 C.J.S. Licenses § 53.

59-16-20. Records.—Every taxpayer shall keep and preserve suitable records, receipts, invoices and other pertinent papers as may be necessary to determine the amount of tax due hereunder.

The commission, or any duly authorized agent, is authorized to examine such books, papers, records, and equipment of any taxpayer and to investigate the character of the business of any such person in order to verify the accuracy of any return made, or, if no return was made by such person, to ascertain and determine the amount required to be collected or paid by this act.

History: L. 1937, ch. 114, § 20; R. S. 1933 & C. 1943, 80-16-20.

Collateral References.
Licenses⇐28.
53 C.J.S. Licenses § 46.

59-16-21. Rules and regulations.—The commission is charged with the enforcement of the provisions of this act and is authorized and empowered to prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of provisions of this act.

History: L. 1937, ch. 114, § 21; R. S. 1933 & C. 1943, 80-16-21.

Collateral References.
Licenses⇐32(2).
53 C.J.S. Licenses § 53.

59-16-22. Information privileged.—Except in accordance with judicial order or as otherwise herein provided, the commission, its agents, clerks and employees shall not divulge any information gained by it from any return filed under the provisions of this act. The officials charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commission in an action or proceeding

under the provision of this act to which it is a party, or on behalf of any party to any action or proceeding under the provisions of this act when the report or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein contained shall be construed to prohibit the delivery to a person or his duly authorized representative of a copy of any return or report filed in connection with his tax or to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney general or other legal representative of the state of the report or return of any person who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding is contemplated or has been instituted under this act. Reports and returns shall be preserved for three years and thereafter until the commission orders them destroyed.

Any violations of the provisions of this section shall be a misdemeanor.

History: L. 1937, ch. 114, § 22; R. S. 1933 & C. 1943, 80-16-22.

Collateral References.

Licenses⇐32(2).
53 C.J.S. Licenses § 53.

Adequacy of immunity offered as condition of denial of privilege of self-incrimination, 118 A. L. R. 602.

59-16-23. Payments under protest—Actions to recover.—No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against this state or against any officer thereof to prevent or enjoin under this act the collection or payment of any tax or any amount of tax herein required to be collected or paid, but after payment of any such tax or any such amount of tax herein required to be collected or paid under protest, duly verified and setting forth the grounds of objection to the legality thereof, the retailer or person making the payment may bring an action against the commission in a court of competent jurisdiction in the county of Salt Lake for the recovery of the amount paid under protest. No such action may be instituted more than six months after the tax or the amount herein required to be collected and/or paid to the state becomes due and payable, and failure to bring suit within said six months shall constitute waiver of any and all demands against the state on account of alleged overpayments hereunder. No grounds of illegality shall be considered by the court other than those set forth in the protest filed at the time of the payment of the tax or the amount herein required to be collected and/or paid to the state.

History: L. 1937, ch. 114, § 23; R. S. 1933 & C. 1943, 80-16-23.

Collateral References.

Licenses⇐35.
53 C.J.S. Licenses § 58.

59-16-24. Penalties—Failure to make or rendering false returns.—Any taxpayer or other person failing or refusing to furnish any return hereby required to be made, or failing or refusing to furnish a supplemental return

or other data required by the commission, or rendering a false or fraudulent return shall be guilty of a misdemeanor for each such offense.

Any person required to make, render, sign, or verify any report as aforesaid, who makes any false or fraudulent return with intent to defeat or evade the assessment or determination of amount due required by law to be made shall be guilty of a misdemeanor for each such offense.

Any violation of the provisions of this act, except as otherwise herein provided, shall be a misdemeanor and punishable as such.

History: L. 1937, ch. 114, § 24; R. S. 1933 & C. 1943, 80-16-24.

Collateral References.

Licenses⇐28.
53 C.J.S. Licenses § 46.

59-16-25. Revenues credited to emergency relief fund.—All revenues collected under the provisions of this act shall be deposited daily with the state treasurer and be credited to the emergency relief fund.

History: L. 1937, ch. 114, § 25; R. S. 1933 & C. 1943, 80-16-25.

Separability Clause.

Section 26 of Laws 1937, ch. 114 (Code 1943, 80-16-26), provided as follows: "If any section, subsection, clause, sentence or phrase of this act which is reasonably separable from the remaining portions of this act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this act. The legislature hereby declares that it would have passed the remaining portions of this act irrespective of the fact that any such section, subsection, clause, sentence or phrase of this act be declared unconstitutional."

Effective Date.

Section 27 of Laws 1937, ch. 114 (Code 1943, 80-16-27) provided that act should take effect from and after July 1, 1937.

Collateral References.

Licenses⇐33.
53 C.J.S. Licenses § 56.

CHAPTER 17

CHAIN STORE LICENSE

59-17-1. Retail chain stores—When license necessary to maintain and operate—Schedule of license fees.—From and after July 1, 1941, it shall be unlawful for any person maintaining or operating after the effective date of this act under the same general management, ownership or control, 10 or more retail chain stores, to maintain or operate a retain chain store in this state without first having obtained a license so to do from the state tax commission as follows:

(1) Stores or mercantile establishments operated in this state and belonging to a chain having a total of not more than 100 stores, the annual license shall be $50 for each such store.

(2) Stores or mercantile establishments operated in this state and belonging to a chain having a total of more than 100 stores, but not more than 200 stores, the annual license shall be $100 for each such store.

(3) Stores or mercantile establishments operated in this state and belonging to a chain having a total of more than 200 stores, but not more than 300 stores, the annual license shall be $200 for each such store.

(4) Stores or mercantile establishments operated in this state and belonging to a chain having a total of more than 300 stores, but not more than 400 stores, the annual license shall be $300 for each store.

(5) Stores or mercantile establishments operated in this state and belonging to a chain having a total or more than 400 stores, but not more than 500 stores, the annual license shall be $400 for each such store.

(6) Stores or mercantile establishments operated in this state and belonging to a chain having more than 500 stores, the annual license shall be $500 for each such store.

History: L. 1941, ch. 87, § 1; C. 1943, 80-17-1.

Title of Act.

An act providing licenses for retail chain stores maintained or operated in this state; prescribing the license fees to be paid therefor and the disposition of moneys derived therefrom; defining the powers and duties of the state tax commission in connection therewith, and providing penalties.

Comparable Provisions.

Idaho Code 1947, § 63-2401 (requiring procurement of license from commissioner of finance in order "to operate, maintain, open or establish any store" in Idaho); § 63-2402 (if applicant desires to operate, maintain, open or establish more than one store, he must make separate application, but the respective stores for which applicant desires to secure licenses may all be listed on one application blank); § 63-2405 (prescribing license fees as follows: "(1) Upon one store the annual license fee shall be five dollars for each such store," being graduated in amount until it reaches item 20: "Upon each store in excess of nineteen the annual license fee shall be five hundred dollars for each such store").

Iowa Code 1950, § 424.1 ("Chain Store Tax Act of 1935"); § 424.4, subd. 1 (imposing annual occupation tax upon every person within Iowa engaged in conducting a business by a system of chain stores; $5 for each store in excess of one and not in excess of ten if said business is conducted at not in excess of ten stores within Iowa under a single or common ownership, supervision or management; the amount is graduated in scale until it reaches subd. 1, f: "One hundred fifty-five dollars for each store in excess of fifty if said business is conducted at in excess of fifty stores within this state under a single or common ownership, supervision or management").

Decisions from other Jurisdictions. — Federal.

Provision of the Iowa Chain Store Tax Act of 1935, imposing a tax based on gross receipts from sales according to an accumulative graduated scale, held invalid under the equal protection clause of the Fourteenth Amendment to the federal Constitution as creating an arbitrary discrimination. Valentine v. Great Atlantic & Pacific Tea Co., 299 U. S. 32, 81 L. Ed. 22, 57 S. Ct. 56, aff'g 12 F. Supp. 760.

In view of rule of law that statutory construction in tax case is against taxing body, that tax laws are to be interpreted liberally in favor of taxpayers, and that words defining things to be taxed may not be extended beyond their clear import, and doubts must be resolved against government and in favor of taxpayers, held that, since there was uncertainty and ambiguity in Iowa Chain Store Tax Act concerning the matter, foreign oil refining corporation's bulk plants, as maintained and operated, should not be subjected to tax under such act. Standard Oil Co. v. Green, 34 F. Supp. 30.

— Iowa.

The classification of chain stores on the basis of the number of units in the chain, with the tax graduated upward with the increase of the number of stores, is reasonable and valid. Tolerton & Warfield Co. v. Iowa State Board of Assessment and Review, 222 Iowa 908, 270 N. W. 427.

The unit tax provision of the Iowa Chain Store Tax Act is a valid exercise of the power of the legislature to impose an occupational tax on persons engaged in a particular system of doing business. Tolerton & Warfield Co. v. Iowa State Board

of Assessment and Review, 222 Iowa 908, 270 N. W. 427.

Collateral References.

Chain store taxes, 51 Am. Jur. 1091, Taxation § 1280 et seq.

Constitutionality of chain store tax, 112 A. L. R. 305.

Power of municipality to impose chain store license tax, 111 A. L. R. 596.

What is a property tax as distinguished from excise, license and other taxes, 103 A. L. R. 18.

59-17-2. Schedule of license fees to open or establish stores after July 1, 1941.—From and after July 1, 1941, it shall be unlawful for any person maintaining or operating after the effective date of this act under the same general management, or control, 10 or more retain chain stores, to open or establish in this state any store not in existence on the effective date of this act, without first having obtained a license so to do from the state tax commission as follows:

(1) Stores or mercantile establishments operated in this state and belonging to a chain having a total of not more than 100 stores, the annual license shall be $500 for each store established or opened.

(2) Stores or mercantile establishments operated in this state and belonging to a chain having a total of more than 100 stores, but not more than 200 stores, the annual license shall be $1000 for each store established or opened.

(3) Stores or mercantile establishments operated in this state and belonging to a chain having a total of more than 200 stores, but not more than 300 stores, the annual license shall be $2000 for each store established or opened.

(4) Stores or mercantile establishments operated in this state and belonging to a chain having a total of more than 300 stores, but not more than 400 stores, the annual license shall be $3000 for each store established or opened.

(5) Stores or mercantile establishments operated in this state and belonging to a chain having a total of more than 400 stores, but not more than 500 stores, the annual license shall be $4000 for each store established or opened.

(6) Stores or mercantile establishments operated in this state and belonging to a chain having more than 500 stores, the annual license shall be $5000 for each store established or opened.

History: L. 1941, ch. 87, § 2; C. 1943, 80-17-2.

59-17-3. Definitions.—(1) The term "person" shall include any individual, corporation, partnership, association, joint stock company, or business trust, however organized.

(2) The term "retail store" shall mean and include any store or mercantile establishment in which goods, wares, or merchandise of any kind or description are sold at retail; but said term shall not include any filling or bulk station engaged primarily in the sale or distribution of petroleum products; stores or show rooms maintained by public utilities for the sale or exhibition of gas or electrical merchandise or equipment; any establishment or facility maintained by a common carrier as part of its transportation facilities primarily for furnishing meals or other com-

modities to its passengers and employees; any branch office maintained by a newspaper for the distribution of its papers or for taking subscriptions or advertisements therefor, individually owned stores, whose revenues in part or in whole are not made available to or inure to the immediate or ultimate benefit of any other individual store, store owner, or any other person, firm, or corporation operating a retail store as herein defined.

(3) The term "under the same general management, supervision, ownership, or control" shall mean control or direction by one management or association of ultimate management, whether by legal control, direct or indirect, or by actual control, direct or indirect, through actual ownership or control of evidences of indebtedness, arising from capital investment, physical property, or agency arrangements, or through interlocking directors or officers.

(4) The term "chain" shall mean under the same general management, supervision, ownership, or control as defined in subsection (3) hereof, and as used in this act includes stores in both this and other states. The term "chain" shall not include any person who may supervise, render service or loan the use of a trade name to a retail store, provided such retail store shall pay only a reasonable fee for such supervision, service or trade name.

History: L. 1941, ch. 87, § 3; C. 1943, 80-17-3.

Compiler's Note.

The reference in this section to "subsection (3)" appeared in Code 1943 as "section 3."

Collateral References.

What amounts to chain store, within license or taxing statute or ordinance, 122 A. L. R. 692.

59-17-4. Tax commission to administer act.—The administration of this act and the collection of license fees herein levied, imposed and required to be paid are vested in the state tax commission, which is authorized to make, promulgate and enforce such reasonable rules and regulations relating to the administration and enforcement of the provisions of this act as may be deemed expedient.

History: L. 1941, ch. 87, § 4; C. 1943, 80-17-4.

59-17-5. Application for license.—The application for a license shall be made on a form which shall be prescribed and furnished by the state tax commission and shall set forth such facts as the state tax commission may require. If the applicant desires to operate, maintain, open or establish more than one such store, he shall make a separate application for a license to operate, maintain, open or establish each store, or to enlarge, but the respective stores for which the applicant desires to secure licenses may all be listed on one application blank. Each application shall be accompanied by the license fees prescribed by this act.

History: L. 1941, ch. 87, § 5; C. 1943, 80-17-5.

59-17-6. State tax commission to examine applications—Issue licenses.—As soon as practicable after the receipt of any such application the state tax commission shall carefully examine the same to ascertain whether it is in proper form and contains the necessary information. If upon exam-

ination, the state tax commission shall find that any application is not in proper form and does not contain the necessary information, it shall return the same to the applicant for correction. If the application is found to be satisfactory and the license fees herein prescribed shall have been paid, the state tax commission shall issue to the applicant a license for such store for which an application for a license shall have been made.

Each licensee shall display the license so issued in a conspicuous place in the store for which license is issued.

History: L. 1941, ch. 87, § 6; C. 1943, 80-17-6.

59-17-7. Annual renewal of licenses.—On or before the first day of July of each year, every person having a license shall apply to the state tax commission for a renewal thereof for the next year ensuing; and if, by such first day of July, an application for a renewal license has not been made, the state tax commission shall notify the delinquent licensee by registered mail, but the failure of the state tax commission so to do shall not relieve any retail store from the duty of renewing its license nor prevent its prosecution for violating any of the provisions of this act. All applications for renewal licenses shall be made on forms prescribed and furnished by the state tax commission and shall be accompanied by the license fees herein prescribed.

History: L. 1941, ch. 87, § 7; C. 1943, 80-17-7.

59-17-8. Dispositions of money collected.—All money collected under the provisions of this act shall be paid into the state treasury, monthly, by the state tax commission, and credited to the general fund.

History: L. 1941, ch. 87, § 8; C. 1943, 80-17-8.

59-17-9. Violation of provisions a misdemeanor.—Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor.

History: L. 1941, ch. 87, § 9; C. 1943, 80-17-9.

Separability Clause.

Section 10 of Laws 1941, ch. 87 (Code 1943, 80-17-10) provided as follows: "If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby."

CHAPTER 18

TOBACCO AND OLEOMARGARINE LICENSES

59-18-1. Cigarettes—Licensing sale of—Licensee—Duration of license—Nontransferability of—Revocation—Grounds for—Penalty.—It shall be unlawful for any person to barter, sell or offer for sale in this state, cigarettes or cigarette papers, without first having obtained a license therefor, which license may be granted and issued by the state tax commission, and shall be in force and effect until the 30th day of June following the date of issue, unless sooner revoked. It shall be granted only to a person owning or operating the place from which such sales are to be made, and in case sales are made at two or more separate places by such person, a separate license for each place of business shall be required; provided further, that any common carrier shall be required to obtain one license only for sales on all trains operated by such carrier within this state, and for the purpose of this act, all trains of such common carriers shall be considered as one place of business. Each license shall be numbered and shall show the residence and place of business of the licensee and shall not be transferable. The state tax commission shall on reasonable notice and after a hearing, revoke the license of any person violating any provisions of this title, and no license can be issued to such person within a period of two years thereafter. Any person engaging in the business of selling or offering for sale within this state any of the products referred to above, without having secured a license therefor shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than twenty dollars ($20) nor more than two hundred ninety-nine dollars ($299), or by imprisonment not exceeding six months, or by both such fine and imprisonment for each offense.

History: R. S. 1933, 93-1-1; L. 1933 (2nd S. S.), ch. 17, § 1; C. 1943, 93-1-1; L. 1947, ch. 138, § 1.

Compiler's Notes.

The 1933 amendment made substantial changes in text.

The 1947 amendment deleted the provisions relating to the licensing of oleomargarine dealers.

Cross-References.

Cities and towns, powers generally, 10-8-1 et seq.

Failure to obtain license a crime, 76-28-67.

Regulation of sale of oleomargarine, 4-20-29 to 4-20-32.

Sales by weight only, 5-6-20.

1. State policy.

It is the policy of this state to discourage the use of cigarettes and tobacco. This act is an exercise of the state's police power, and is not a revenue measure. State v. Packer Corp., 77 U. 500, 505, 297 P. 1013, followed in 78 U. 177, 2 P. 2d 114, aff'd 285 U. S. 105, 76 L. Ed. 643, 52 S. Ct. 273.

2. Power of legislature.

The traffic in and use of cigarettes and tobacco being a proper subject to be dealt with by the legislature, it is a legislative function primarily to determine the manner in which and extent to which it will deal with such subject matter. State v. Packer Corp., 77 U. 500, 297 P. 1013, followed in 78 U. 177, 2 P. 2d 114, aff'd 285 U. S. 105, 76 L. Ed. 643, 52 S. Ct. 273.

Decisions from other Jurisdictions.

— California.

Provisions of state law, not to mention federal laws and regulations on the subject, embrace a complete scheme for regulation of manufacture and sale of oleomargarine; and a county ordinance was invalid, the title of which disclosed its sole and only purpose, namely, to require a license and the payment of a license tax, and whose only semblance of a regulatory provision was one requiring that county license as well as state license be conspicuously displayed, this purported added regulation being but a pretense inserted in the ordinance in an attempt to justify the imposition of a tax; and a $200 tax, imposed upon every retailer thereby, irrespective of amount of sales, was clearly excessive and prohibitory. Ex parte Bock, 125 Cal. App. 375, 13 P. 2d 836.

— Iowa.

A statutory provision making unlawful the sale of cigarettes, without having paid a mulct tax, was not unconstitutional on ground that, although it related to some extent to imposition of a mulct tax, it was included in the Criminal Code, nor on the ground that it was a statute not of uniform operation. Cook v. Marshall County, 119 Iowa 384, 93 N. W. 372, 104 Am. St. Rep. 283, aff'd 196 U. S. 261, 49 L. Ed. 471, 25 S. Ct. 233.

Mulct tax on business of selling cigarettes is levied to meet burdens imposed upon the general public by what is thought to be the result upon the human race, and particularly upon children, of the use of cigarettes. Hodge v. Muscatine County, 121 Iowa 482, 96 N. W. 968, 67 L. R. A. 624, 104 Am. St. Rep. 304, aff'd 196 U. S. 276, 49 L. Ed. 477, 25 S. Ct. 237.

Statutes regulating sale of substitutes for butter are not unconstitutional. State v. Armour Packing Co., 124 Iowa 323, 100 N. W. 59, 2 Ann. Cas. 448.

If there is any material jurisdictional error in proceedings under the cigarette law, it will be subject to review and correction on appeal, but will not justify equitable interference by injunction. Gaspari v. Madison County, 195 Iowa 1103, 192 N. W. 855.

That the officers, having charge of collection of tax, required payment when a wholesaler sold cigarettes to another wholesaler, or to a jobber or retailer, and such practice was acquiesced in by wholesalers and jobbers and was recognized as a correct interpretation of the law, was not controlling on the court in determining whether or not the accused had been guilty of violating such criminal statute in selling cigarettes as a wholesaler or jobber. State v. Lagomarcino-Grupe Co., 207 Iowa 621, 223 N. W. 512.

Under statute providing that permits to sell cigarettes may be granted by the council of a city or town, a permit is a privilege, and not a right, and may be granted or refused upon consideration of the merits, in the discretion of the council. Bernstein v. City of Marshalltown, 215 Iowa 1168, 248 N. W. 26, 86 A. L. R. 782.

A statute which authorized a city council to grant permits for the sale of cigarettes did not repeal another statute prohibiting such sales, but only allowed an exception to the general prohibition where a permit was so issued. Ford Hopkins Co. v. Iowa City, 216 Iowa 1286, 248 N. W. 668, superseding 240 N. W. 687.

Collateral References.

Licenses⇦16.
53 C.J.S. Licenses § 30.

59-18-2. Annual fees—Credited to general fund.—No license shall be issued until the applicant shall have paid to the state tax commission an annual license fee of $10.00 per year or fraction thereof for the sale of cigarettes or cigarette papers. All such license fees shall be credited to the general fund of the state.

History: R. S. 1933, 93-1-2; L. 1933 (2nd S. S.), ch. 17, § 1; C. 1943, 93-1-2; L. 1947, ch. 138, § 1.

Compiler's Notes.

The 1933 amendment made substantial changes in text.

The 1947 amendment deleted provisions relating to license fees of oleomargarine dealers.

Collateral References.

Licenses⇦29.
53 C.J.S. Licenses § 48.

59-18-3. Bond a condition precedent to licensing—Exception.—No license shall be granted until the applicant therefor shall file with the state tax commission in such form and in such amount as it shall prescribe a bond, the minimum amount of which shall be $500, duly executed by such applicant as principal and with a corporate surety which bond shall be payable to the state of Utah, conditioned upon the faithful performance of all the requirements of this act including the payment of all taxes, penalties and other obligations of such applicant arising under the act; provided, that applicants who will purchase during the license year only products which have the proper state stamp affixed as required by the act and who file an affidavit with their application attesting to this fact shall not be required to post such a bond.

History: R. S. 1933, 93-1-3; L. 1933 (2nd S. S.), ch. 17, § 1; 1939, ch. 109, § 1; C. 1943, 93-1-3.

Compiler's Note.

The 1933 and 1939 amendments enumerated in the history line made substantial changes in text.

Collateral References.

Licenses⊂=26.
53 C.J.S. Licenses § 36.

59-18-4. Excise tax.—There is hereby imposed and there shall be collected by and paid to the state tax commission upon the sale of the following articles in the state of Utah, a tax at the rate hereinafter set forth, such tax to be paid by the manufacturer, jobber, distributor, or retailer:

1. On cigarettes weighing not more than three pounds per thousand, one mill on each cigarette;

2. On cigarettes weighing more than three pounds per thousand, two mills on each such cigarette;

3. On cigarette papers, or wrappers, or any papers made or prepared for the purpose of making cigarettes, made up in packages, books, or sets; on each such package, book, or set one-half cent for each fifty papers or fractional part thereof.

4. On tubes, one cent for each fifty paper tubes or fractional part thereof.

5. Upon oleomargarine, as defined in section 59-18-16, not artificially colored, five cents per pound or fractional part thereof;

6. Upon oleomargarine, as defined in section 59-18-16, artificially colored, ten cents per pound or fraction thereof.

History: R. S. 1933, 93-1-4; L. 1933 (2nd S. S.), ch. 17, § 1; C. 1943, 93-1-4.

Compiler's Notes.

The 1933 amendment made minor changes in text.

The references in this section to "section 59-18-16" appeared in Code 1943 as "section 93-1-16."

1. Nature of legislation.

This act is a police measure, even though revenue is derived therefrom. State v. Packer Corp., 77 U. 500, 297 P. 1013, followed in 78 U. 177, 2 P. 2d 114, aff'd 285 U. S. 105, 76 L. Ed. 643, 52 S. Ct. 273.

Collateral References.

Licenses⊂=15.1.
53 C.J.S. Licenses § 30.

59-18-5. Stamps to be affixed—Time—Exceptions—Bonds—Violations—Penalty—Unstamped container as evidence.—The taxes imposed by this

chapter shall be paid by affixing stamps in the manner and at the time herein set forth, unless otherwise required by regulation of the state tax commission.

1. In the case of cigarettes and cigarette papers the stamps shall be securely affixed to each individual package;

2. In the case of oleomargarine, the stamps shall be securely affixed at the time and in the manner which the state tax commission may, by regulation, require.

Such stamps shall be affixed, as hereinabove specified, within seventy-two hours after any of the above commodities are received by any wholesaler, distributor or retailer within this state; provided however, that all such commodities must be stamped before being sold within the state. In the event any such products are manufactured within the state, they shall be stamped by the manufacturer when and as sold.

The state tax commission, may, in its discretion, where it is practical and reasonable for the enforcement of the collection of taxes provided hereunder, promulgate such rules and regulations as to permit any of the articles, upon which an excise is imposed by this chapter, to remain unstamped in the hands of wholesaler or distributor until the original case or crate is broken, unpacked, or sold, or it may permit any manufacturer, wholesaler, or distributor to sell and export, to a regular dealer in such articles outside the state, any of such articles, without affixing the stamps thereto, as herein required; provided however, that where such articles are allowed to remain unstamped in the hands of such wholesaler or distributor, the state tax commission may require a surety bond from such wholesaler or distributor, such bond to be executed by a surety company authorized to do business in this state, and conditioned to secure the payment of all taxes and penalties provided in this chapter.

It is the intent and purpose of this chapter to require all manufacturers, jobbers, distributors and retail dealers securely to affix the stamps provided for in this section to the packages or containers of products referred to in section 59-18-1, but when the stamps have been affixed as required herein, no further or other stamp shall be required under the provisions of this chapter, regardless of how often such articles may be sold or resold in this state. Any person failing properly to affix and cancel stamps to the products enumerated in section 59-18-1, as provided herein or by regulations promulgated by the state tax commission as provided in this chapter, shall be required to pay as a part of the tax imposed hereunder, a penalty of not less than ten dollars ($10) nor more than two hundred ninety-nine dollars ($299) for each offense, to be assessed and collected by the state tax commission as provided in section 59-18-15. Each article, package or container not having proper stamps affixed thereto as herein required shall be deemed a separate offense. The presence of any package or container in the place of business of any person required by the provisions of this chapter to stamp the same shall be prima facie evidence that they are intended for sale and subject to tax under this chapter.

History: R. S. 1933, 93-1-5; L. 1933 (2nd S. S.), ch. 17, § 1; C. 1943, 93-1-5.

Compiler's Notes.

The 1933 amendment completely rewrote section.

The references in this section to "section 59-18-1" and "section 59-18-15" appeared in Code 1943 as "Section 1" and "Section 93-1-1" and "Section 93-1-15" respectively.

Collateral References.

Licenses⇐32(1).
53 C.J.S. Licenses § 51.

59-18-6. Violations—Goods declared contraband—Seizure—Sale.—Any products referred to in section 59-18-1 found at any point in this state which shall have been within this state for a period of seventy-two hours or longer in the possession of any wholesaler, distributor or retailer or having been sold by such wholesaler, distributor or retailer not having affixed to the package or container the stamps as above provided, are hereby declared to be contraband goods and the same may be seized by the state tax commission or its employees or by any peace officer of the state of Utah, or any political subdivision thereof, without a warrant. Such goods shall be delivered to the state tax commission for sale at public auction to the highest bidder, after due advertisement. The state tax commission, before delivering any of said goods so seized and sold, shall require the person receiving said goods to affix the proper amount of stamps to the individual packages or containers as above provided.

History: R. S. 1933, 93-1-6; L. 1933 (2nd S. S.), ch. 17, § 1; C. 1943, 93-1-6.

Compiler's Notes.

The 1933 amendment completely rewrote entire section.

The reference in this section to "section 59-18-1" appeared in Code 1943 as "Section 93-1-1."

Collateral References.

Licenses⇐32(2).
53 C.J.S. Licenses § 52.

59-18-7. Disposition of proceeds.—The proceeds of any goods sold hereunder, after the payment therefrom of the cost of confiscation and sale, shall be turned over to the state treasurer for the credit of the state general fund.

History: R. S. 1933, 93-1-7; L. 1933 (2nd S. S.), ch. 17, § 1; C. 1943, 93-1-7.

Compiler's Note.

The 1933 amendment made material changes in phraseology of text.

Collateral References.

Licenses⇐33.
53 C.J.S. Licenses § 56.

59-18-8. Inspection—Rules and regulations to assist—Violations—Penalty.—The state tax commission may provide, by regulations, the method of breaking packages, (the forms and kinds of containers) and the methods of affixing and cancelling stamps that shall be employed by persons engaged in the sale of any of the products subject to the tax imposed by this chapter, which regulations will make possible the enforcement of payment by inspection. Any person who shall engage in or permit any practice which is prohibited by law or by regulations of the state tax commission and which shall make it difficult to enforce the provisions of this chapter by inspection, or who shall refuse to allow full inspection of his premises upon the demand of any peace officer or of any agent of the state tax commission, or who shall hinder or in anywise delay or

prevent such inspection when demand is made therefor, shall be guilty of a misdemeanor and shall, upon conviction, be fined not less than twenty dollars ($20) nor more than two hundred dollars ($200) or be imprisoned for a period not exceeding thirty (30) days, or both, for each offense.

History: R. S. 1933, 93-1-8; L. 1933 (2nd S. S.), ch. 17, § 1; C. 1943, 93-1-8.

Compiler's Note.

The 1933 amendment rewrote entire section.

1. Validity.

The former section was declared unconstitutional not because the legislature delegated to the state tax commission a judicial rather than an administrative power, but a legislative function to determine the amount of the penalty for violation of the law. Tite v. State Tax Comm., 89 U. 404, 416, 57 P. 2d 734.

Collateral References.

Licenses⇐41.
53 C.J.S. Licenses § 55.

59-18-9. Stamps—Making, revising, counterfeiting a felony.—Whoever wilfully removes or otherwise prepares any adhesive stamp with the intent to use or cause to be used after it has already been used, or knowingly or wilfully buys, sells, offers for sale or gives away any such washed or restored stamp to any person, or knowingly uses the same or has in his possession any washed or restored stamp which has been removed from the package or article to which it had been previously affixed, or whoever, for the purpose of indicating the payment of any tax hereunder, reuses any stamp which has heretofore been used for the purpose of paying any tax provided in this chapter, or whoever buys, sells or offers for sale or has in his possession any counterfeit stamp, is guilty of a felony and upon conviction shall be punished by a fine of not more than $1,000 or by imprisonment for not more than five years or both.

History: R. S. 1933, 93-1-9; L. 1933 (2nd S. S.), ch. 17, § 1; C. 1943, 93-1-9.

Compiler's Note.

The 1933 amendment made substantial changes in text.

Cross-Reference.

Forging and counterfeiting, 76-26.

Collateral References.

Licenses⇐40.
53 C.J.S. Licenses § 66.

59-18-10. Stamps—Preparation—Distribution—Redemption—Refunding—Dealers exempt—Discount allowed—Trafficking in forbidden.—The state auditor is hereby authorized to have prepared, according to such specifications and designs and in such denominations as may be submitted to him by the state tax commission, stamps for use on packages and containers of any of the products enumerated in section 59-18-1, the sale of which is subject to tax under this chapter, and upon requisition from the state tax commission, the state auditor shall deliver to its order the stamps designated in such requisition and shall keep an accurate record of all stamps coming into and leaving his hands. The cost of said stamps shall be charged to any appropriation made to defray the administration of this chapter.

The state tax commission shall sell the stamps herein provided for only to persons holding licenses issued as provided in this chapter, and the moneys received from the sale of such stamps shall be turned into the general fund of the state. The state tax commission may deliver stamps in face value not to exceed 90% of the penal sum of licensee's bond to any licensee without payment therefor; provided that licensee

shall make payment for stamps so delivered upon consignment within sixty days of the date stamps were delivered to licensee. Unused stamps may be redeemed, within two years after such stamps shall have been purchased from the state tax commission, by presentation to the state tax commission of a claim therefor, by the person to whom they were originally sold, accompanied by the unused stamps. The state tax commission shall certify said claim with its approval to the state auditor, who shall draw a warrant upon the state treasurer for the payment of such claim.

When any articles, the sale of which is taxable under this chapter, and upon which such taxes have been paid, are sold and shipped to a regular dealer in such articles in another state, the seller in this state, if he be a licensed dealer in such products, shall be entitled to a refund of the actual amount of the taxes which he has paid, upon condition that the seller in this state shall make affidavit that the goods were so sold and shipped, and that he shall furnish from the purchaser a written acknowledgment that he has received such goods and the amount of stamps thereon, together with the name and address of the purchaser. The taxes shall be refunded in the manner provided above for the redemption of unused stamps.

When such articles, upon which no tax has been paid, are sold for export, and in due course so exported, to a regular dealer in such articles in another state, the wholesaler or distributor in this state shall be exempt from the payment of any tax upon the sale of such articles, if and when he shall have furnished such proof of said sale and exportation as the state tax commission may require.

The state tax commission shall allow a discount of ten per cent (10%) to any licensee upon the entire amount of each single purchase of stamps amounting to twenty-five dollars ($25) or over.

It shall be unlawful for any person to sell or dispose of such stamps to any other person whomsoever, except that whenever a person owns or operates more than one place of sale, stamps may be distributed to the various places of sale by the main office, but each place of sale must have a separate license and cancellation stamp.

History: R. S. 1933, 93-1-10; L. 1933 (2nd S. S.), ch. 17, § 1; C. 1943, 93-1-10.

Compiler's Notes.

The 1933 amendment made substantial changes in text.

The reference in this section to "section 59-18-1" appeared in Code 1943 as "Section 93-1-1."

Collateral References.

Licenses⊂=32(2).
53 C.J.S. Licenses § 52.

59-18-11. Duties of attorney general, city, county or district attorneys or peace officers.—The state tax commission in the enforcement of any tax laws which it administers may call to its aid the attorney general, or any city, county or district attorney, or any peace officer.

History: R. S. 1933, 93-1-11; L. 1933 (2nd S. S.), ch. 17, § 1; C. 1943, 93-1-11.

Compiler's Note.

The 1933 amendment made substantial changes in text.

Collateral References.

Licenses⊂=32(2).
53 C.J.S. Licenses § 52.

59-18-12. Furnishing cigarettes to minors forbidden.—Any person who furnishes to any minor by gift, sale or otherwise, any cigarette or cigarette paper or wrapper, or any paper made or prepared for the purpose of making cigarettes, or any tobacco of any kind whatsoever, is guilty of a misdemeanor.

History: R. S. 1933, 93-1-12; L. 1933 (2nd S. S.), ch. 17, § 1; C. 1943, 93-1-12.

Compiler's Note.

The 1933 amendment made substantial changes in text.

Collateral References.

Infants⊂⊃13.
43 C.J.S. Infants § 11.

59-18-13. Imported products—Duplicate invoices or receipts furnished tax commission.—All persons dealing in the products referred to in section 59-18-1, purchasing or receiving such commodities from without the state, whether the same shall have been delivered through a wholesaler, distributor or jobber in this state, or by drop shipment or otherwise, shall, within ten days after receipt of the same, mail or deliver a duplicate invoice of all such purchases or receipts to the state tax commission. Failure to furnish duplicate invoices or receipts as so required shall be a misdemeanor.

History: R. S. 1933, 93-1-13; L. 1933 (2nd S. S.), ch. 17, § 1; C. 1943, 93-1-13.

Compiler's Notes.

The 1933 amendment made substantial changes in text.

The reference in this section to "section 59-18-1" appeared in Code 1943 as "section 93-1-1."

Collateral References.

Licenses⊂⊃16.
53 C.J.S. Licenses § 30.

59-18-14. Tax commission to enforce provisions.—The state tax commission shall administer and enforce the taxes imposed by this chapter. It shall have the power to enter upon the premises of any taxpayer and to examine or cause to be examined by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the taxes payable, and to secure any other information directly or indirectly concerned in the enforcement of this chapter and it may, in its discretion, upon making a record of its reasons therefor, waive, reduce or abate any of the penalties provided for in this chapter, or it may compromise the same.

History: R. S. 1933, 93-1-14; L. 1933 (2nd S. S.), ch. 17, § 1; C. 1943, 93-1-14.

Compiler's Note.

The 1933 amendment made substantial changes in text.

Collateral References.

Licenses⊂⊃32(2).
53 C.J.S. Licenses § 52.

59-18-15. Collection of delinquent tax or penalties.—If the taxes or penalties imposed by this chapter, or any portion thereof, are not paid when the same become due, the collection shall be made, except as herein provided, in the same manner as is provided for the collection of delinquent taxes in sections 59-13-53 and 59-13-54, Utah Code Annotated 1953.

History: R. S. 1933, 93-1-15, added by L. 1933 (2nd S. S.), ch. 17, § 1; C. 1943, 93-1-15.

Compiler's Note.

The reference in this section to "sections 59-13-53 and 59-13-54, Utah Code Annotated 1953" appeared in Code 1943 as

"Sections 80-13-54 and 80-13-55, Revised Statutes of Utah, 1933."

Collateral References.

Licenses⇐32(2).
53 C.J.S. Licenses § 52.

59-18-16. "Oleomargarine" defined.—For the purposes of this title certain manufactured substances, certain extracts and certain mixtures and compounds, including such mixtures and compounds with butter, shall be known and designated as "oleomargarine," namely: all substances heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, suine and neutral; (all mixtures and compounds of oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral;) all lard extracts and tallow extracts, and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, fish oil or fish fat, vegetable oil, intestinal fat or offal fat, with annatto, or other coloring matter, of (1) made in imitation or semblance of butter, or (2) calculated or intended to be sold as butter or for butter, or (3) churned, emulsified, or mixed in cream, milk, water or other liquid, and containing moisture in excess of one per cent. This section shall not apply (1) to puff-pastry shortening not churned or emulsified in milk or cream and having a melting point of one hundred and eighteen or more degrees Fahrenheit, or (2) to any of the following preparations containing condiments and spices; salad dressing, mayonnaise dressings or mayonnaise products; or (3) to pharmaceutical preparations.

History: R. S. 1933, 93-1-16, added by L. 1933 (2nd S. S.), ch. 17, § 1; C. 1943, 93-1-16.

Collateral References.

Food⇐8.
36 C.J.S. Food § 18.

59-18-17. Carriers to report shipments.—Every common carrier hauling, transporting, or shipping into or out of the state of Utah from or to any other state or foreign country any of the products, articles or commodities which if sold in the state of Utah is subject to an excise tax, shall, when so required by the state tax commission, report in writing all such shipments or deliveries to the state tax commission on blanks furnished by it, giving the date, to whom the same was consigned and delivered, and the quantity as shown by the bill of lading, and such other information as the state tax commission may require. Power to exact such information from carriers is hereby expressly conferred on the state tax commission.

History: R. S. 1933, 93-1-17, added by L. 1933 (2nd S. S.), ch. 17, § 1; C. 1943, 93-1-17.

Comparable Provision.

Iowa Code 1950, § 98.24 (requiring every common carrier in Iowa, having custody of books or records showing transportation of cigarettes, both interstate and intrastate, to give and allow state tax commission free access to such books and records).

Collateral References.

Licenses⇐32(2).
53 C.J.S. Licenses § 52.

59-18-18. Tobacco vending machine accessible to minors—Unlawful.—Any person who maintains after June 30, 1941, in his place of business a tobacco vending machine accessible to minors or provides any method of self-help for the disposition to minors by gift, sale or otherwise of any cigarette or cigarette paper or wrapper, or any paper made or prepared for the purpose of making cigarettes, or tobacco in any form whatsoever, is guilty of a misdemeanor.

History: R. S. 1933, 93-1-18, added by L. 1941, ch. 95, § 1; C. 1943, 93-1-18.

Comparable Provisions.

Deering's Cal. Penal Code, § 308 (misdemeanor to sell or give or in any way furnish to person, who is in fact under age of 18 years, any tobacco, cigarette or cigarette papers, or any other preparation of tobacco; copy of act must be posted in place of business).

Idaho Code 1947, § 18-1502 (misdemeanor to give, sell or furnish to minor persons, directly or indirectly, cigarettes, cigars or tobacco in any form, or cigarette paper or wrapper, or tobacco compound used in filling or makeup of cigarettes).

Iowa Code 1950, § 98.36, subd. 6 (unlawful to sell or vend cigarettes by means of device known as vending machine); § 98.2 (unlawful to furnish to minor under 21 years of age by gift, sale or otherwise, any cigarette or cigarette paper, or any paper or other substance made or prepared for purpose of use in making of cigarettes; no person shall directly or indirectly by himself or agent sell, barter, or give to a minor under 16 years of age, any tobacco in any other form, except on written order of parent, guardian, or person in whose custody he is).

Montana Rev. Codes 1947, § 94-35-208 (misdemeanor to sell or give tobacco, cigars, cigarettes, or cigarette paper to minor under 18 years of age).

Collateral References.

Infants⇨13.
43 C.J.S. Infants § 11.

59-18-19. Violation a nuisance—Abatement.—Any person violating any of the provisions of section 59-18-18 shall be deemed guilty of keeping and maintaining a nuisance, and such persons may be enjoined from maintaining such nuisance and such building or place may be abated as a nuisance.

History: R. S. 1933, 93-1-19, added by L. 1941, ch. 95, § 1; C. 1943, 93-1-19.

Compiler's Note.

The reference in this section to "section 59-18-18" appeared in Code 1943 as "Section 93-1-18 of this act."

Collateral References.

Infants⇨13.
43 C.J.S. Infants § 11.

CHAPTER 19

STATE TAX SYSTEM COMMITTEE

Section 59-19-1. Committee—Establishment of—Composition of—Filling vacancies.
59-19-2. Meetings.
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59-19-4. Recommendation of legislation.
59-19-5. Powers, privileges and prerogatives of committee—Exercise of powers of committee.
59-19-6. Mileage and expenses.
59-19-7. Appropriation.

59-19-1. Committee—Establishment of—Composition of—Filling vacancies.—There is established a committee composed of nine members, to be appointed as follows: Three by the president of the senate from members of the senate, three by the speaker of the house from members of the house, one by the state farm bureau, one by the Utah industrial legislative council and one by the combined labor legislative council. Any vacancies in said committee of senate or house members shall be filled by the governor and other vacancies shall be filled by the appointing groups.

History: L. 1945, ch. 114, § 1; C. 1943, Supp., 80-18-1.

Title of Act.

An act establishing a committee to investigate and study the taxation system

of the state, to study new sources of revenue and to make recommendations to the legislature embodying changes in existing law or enactment of new laws or constitutional amendments to effectuate the committee's recommendations, and making an appropriation.

Comparable Provisions.

Deering's Cal. Agric. Code, § 611 (requiring separate licenses in order to engage in business or occupation of manufacturing, selling, dealing in or furnishing, or to have in one's possession for purposes other than consumption in one's own family, or for transportation in case of boat or railroad company, or for storage in case of warehouse or cold storage company, (a) imitation milk, (b) oleomargarine, renovated butter or substitute for butter, or (c) imitation cheese or substitute for cheese, (d) imitation ice cream or imitation ice milk).

Iowa Code 1950, § 98.5 (every distributor, wholesaler and retailer engaged in sale or use of cigarettes, upon which tax is required to be paid, must obtain state and/or retail cigarette permit; section contains tabulation of fees); § 194.1 (imposing inspection fee and excise tax of five cents on each pound of oleomargarine sold, offered or exposed for sale, or given or delivered to a consumer).

Montana Rev. Codes 1947, § 3-2445 (requiring license in order to sell, exchange, offer for sale, or have in one's possession with intent to sell or offer for sale or exchange, any oleomargarine, imitation or filled cheese or any substitute for any dairy product made from milk or cream; license must be posted in each store or place of business; separate license must be obtained for each place of business).

Collateral References.

Taxation⇐28.
61 C.J. Taxation § 11.

59-19-2. Meetings.—Such committee shall meet at the state capitol within thirty days after appointment and organize by selecting one of its members as chairman, and may by rule provide for the holding of meetings, creation of sub-committees, and for the organization and procedure to be followed by the committee.

History: L. 1945, ch. 114, § 2; C. 1943, Supp., 80-18-2.

Collateral References.

Taxation⇐28.
61 C.J. Taxation § 11.

59-19-3. Duties of committee.—The committee is charged with the following duties: Study of the existing taxation system of the state of Utah and determination of equities and inequities in the present system and the possibility of raising additional revenue through existing forms of taxation; study possible sources of new revenue to the state including requirements of postwar construction and employment; determine the effect of the present tax laws on establishment of new industries in the state and retention of existing industries, by comparing the tax laws of this state with the revenue producing measures of other states and particularly western states; determine what necessary expenditures the state has and what existing current expenditures should be reduced or eliminated as a means of promoting the general welfare of the entire state; study the constitutional provisions of the state controlling the appropriation, use and raising of revenue and consider needed changes in such provisions and in the provisions controlling expenditure of state funds.

History: L. 1945, ch. 114, § 3; C. 1943, Supp., 80-18-3.

Comparable Provision.

Iowa Code 1950, § 98.14 (no retail permit, state permit, or manufacturer's permit, may be issued until applicant files bond in favor of state of Iowa, for benefit of county, city, or town, as the case may be, and conditioned upon payment of taxes, damages, fines, penalties and costs adjudged against permit holder for violation of provisions of cigarette statute).

Collateral References.

Taxation⇐28.
61 C.J. Taxation § 11.

59-19-4. Recommendation of legislation.—The committee shall be prepared to recommend new legislation and amendments to existing legislation to the twenty-seventh legislature or to any special session of the twenty-sixth legislature authorized to consider amendments to the revenue producing laws of the state.

History: L. 1945, ch. 114, § 4; C. 1943, Supp., 80-18-4.

Comparable Provisions.

Idaho Code 1947, § 37-1402 (imposing, upon oleomargarine sold to or removed for consumption or used by consumers or persons purchasing or removing same for use and not for re-sale as dealers or merchants, tax at rate of five cents per pound to be paid by merchant, dealer or manufacturer; tax at rate of ten cents per pound in case of oleomargarine which is yellow in color).

Iowa Code 1950, § 98.6 (imposing tax on cigarettes used or otherwise disposed of in Iowa for any purpose whatsoever, as follows: one mill on each cigarette, where cigarettes weigh not more than three pounds per thousand; two mills on each cigarette, where they weigh more than three pounds per thousand; one-half cent on each package, book or set of papers or wrappers containing 50 papers or less; one cent, where more than 50 but not more than 100 papers are contained therein; one-half cent for each 50 or fractional part thereof, where more than 100 papers are contained therein; on tubes, one cent for each 50 tubes or fractional part thereof).

Collateral References.

Taxation⊂⇒28.
61 C.J. Taxation § 11.

59-19-5. Powers, privileges and prerogatives of committee—Exercise of powers of committee.—Such committee shall have right of entry to all state institutions and departments and power to visit and inquire into the offices and departments of all political subdivisions of the state relating to the assessment and taxation of tangible property and other forms of taxation. The committee shall have the power to require from any and all persons, sworn statements, special reports or such other information as it may desire with reference to public revenue and to require the production and examination of the private books and records of all persons, firms and corporations connected with the financing of the state of Utah. Said committee shall have power and authority to employ experts, investigators, stenographers and other clerical help and may keep all records that it may deem advisable. It may subpoena and examine witnesses and records and any member of the committee may administer oaths to witnesses and may requisition the services temporarily of any employee of the legislature or the state or of any institution, department, or agency of the state.

The powers of the committee may be exercised through the committee as a whole, through subcommittees, through individual members or through authorized representatives of the committee according to the rules established pursuant to section 59-19-2 hereof.

History: L. 1945, ch. 114, § 5; C. 1943, Supp., 80-18-5.

Compiler's Note.

The reference in this section to "section 59-19-2" appeared in Code 1943 as "section 2."

Collateral References.

Taxation⊂⇒28.
61 C.J. Taxation § 11.

59-19-6. Mileage and expenses.—Members of the committee shall receive or be reimbursed for railroad fare, hotel, and other necessary expenses incurred in the discharge of their duties.

History: L. 1945, ch. 114, § 6; C. 1943, Supp., 80-18-6.

Collateral References.
Taxation⇨28.
61 C.J. Taxation § 11.

59-19-7. Appropriation.—There is hereby appropriated from the money in the state general fund not otherwise appropriated, the sum of $25,000 or as much thereof as may be necessary for the purpose of defraying the expenses of the committee hereby created, and the compensation and expenses of its employees, including the publishing of copies of the committee's report and the distribution of the same, and preparing bills for introduction in the legislature.

History: L. 1945, ch. 114, § 7; C. 1943, Supp., 80-18-7.

Effective Date.
Section 8 of Laws 1945, ch. 114 (Code 1943, 80-18-8) provided that act should take effect on approval. Approved March 16, 1945.

Collateral References.
Taxation⇨28.
61 C.J. Taxation § 11.